

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

First Appeal From Order No. 703 of 2001
(Old No. 414 of 1987)

The State of U.P. through the Collector
Tehri Garhwal

...Appellant

Vs

1. Smt. Phajeeti Devi
W/o Late Sri Chandra Singh Bisht
2. Bhagwan Singh
3. Km. Rajni Devi
4. Km. Jhampa Devi
Son & daughter of Late Sri Chandra Singh Bist
Tehsil Deo Prayag
District Tehri Garhwal
5. Uttar Pradesh State Road Transport Corporation
Dehradun
6. Mahavir Singh S/o Tej Singh
Driver Truck No. UTO 9889
P.W.D. Pauri Garhwal

...Respondents

Sri Nand Prasad, learned Standing Counsel for the Appellant

Hon'ble B.C. Kandpal, J.

This appeal under Section 110 (D) of the Motor Vehicles Act has been preferred by the State against the judgment and order dated 29.10.1986 passed by the M.A.C.T., Tehri Garhwal in Motor Accident Claim Petition No. 15 of 1984 Smt. Phajeeti Devi & others Vs. State of Uttar Pradesh State Road Transport Corporation whereby the Tribunal has awarded the compensation to the respondents at Rs. 34,378.00 and interest @ 6% per annum from the date of filing of the petition till the date of the payment.

2. Brief facts of the case are that on 08.09.1983 at about 01:00 p.m. Sri Chandra Singh Bist was traveling on Shiv Puri and Byasi, on Rishiksh – Deoprayag road in District Tehri Garhwal in bus bearing registration No. UTF 3705. The

bus was being driven by the driver in a very rash and negligent manner. The bus driver was in a hurry to make up for the lost time. Just before the place of accident, there was a steep downward decline and a truck bearing registration No. UTC 9889 was coming from Rishikesh side. The truck was also being driven rashly and carelessly. The driver of the bus took the bus to the extreme edge of the road and dashed with the truck due to which the bus rolled down in the river Ganga resulting the death of Chandra Singh Bist and many other persons. According to the opposite parties the deceased was aged about 50 years at the time of the accident and his occupation was agriculture by which he used to earn Rs 400/- per month. The claimant claimed Rs. 1,56,000/- as compensation.

3. The Collector, Tehri Garhwal and owner of the truck filed their written statement before the Tribunal. It was undisputed between the parties that due to the death of the deceased, the U.P. State had paid Rs. 15,122/- to the opposite parties. It has further alleged in the written statement that at the place of accident, the road was narrow and the truck was going on ascent and the bus was descending. There was a sharp curve, so the truck driver could not have seen the bus from a long distance. The bus driver wanted to pass the truck and its rear part hit the truck due to which the bus lost balance and rolled down in the *Khud*.

4. Uttar Pradesh State Road Transport Corporation filed its separate written statement alleging therein that the factum of the accident was admitted but it was said that at the place of accident the driver of the bus slowed down the speed though he was on steep incline on the slippery road and the truck hit its right side and due to the space being left for the

bus being very little, due to impact of the truck the bus lost balance and rolled down in the *Khud*.

5. The learned court below on the basis of the pleadings adduced by the parties framed following issues:-

- 1) Whether the accident was occasioned due to rash and negligent driving of the drivers of the two vehicles involved or due to negligence of anyone of them? If so, its effect?
- 2) To what amount of compensation are the petitioners entitled and from which of the respondents and to what extent?
- 3) To what relief, if any, are the petitioners entitled?

6. The Tribunal concerned after having considered that entire material available on the record awarded compensation of Rs. 34,378/- in favour of the opposite parties vide judgment and award dated 29.10.1986.

7. Feeling aggrieved by the aforesaid judgment and award passed by the Tribunal concerned, this appeal has been preferred by the appellant – Collector, Tehri Garhwal before the Allahabad High Court.

8. Heard Sri Nand Prasad, learned counsel for the appellant and perused the record.

9. The evidence on record shows that Fajeeti Devi (P.W.1) who is the wife of the deceased – Chandra Singh Bist has deposed that her husband died in collusion between bus

and truck. This witness is not an eyewitness but she has verified the contents of the claim petition.

10. The main witness of the occurrence on the point of manner of accident is Kailashi (P.W.2) who has deposed in her statement that she was traveling in the ill-fated bus on 08.09.1983. She has further deposed that she along with her mother had boarded the bus bearing Registration No. UTF 3705 at Khandogi and they were going to Dehradun. The accident according to her occurred at 01:30 p.m. between Gooler and Shivpuri. She has further deposed that Chandra Singh was also traveling in this bus as Chandra Singh boarded the bus at Hindolakhali in her presence. This witness was sitting on the seat behind the seat of the bus driver. She has deposed that the driver of the bus was driving the vehicle in a rash and negligent manner. The deceased as well as other persons asked the driver to drive slowly but the driver did not pay any heed. This witness has further deposed that the bus was coming down at the place of accident while the truck concerned was coming upwards and both the vehicles blew no horn. The bus driver in order to save the truck turned the bus downwards but the truck driver did not try to save the vehicle and he remained driving on it. Hence the front part of the truck collided with rear part of the bus and the voluminous sound took place and the bus rolled down in the *Khud*.

11. On account of this accident, Kailashi Devi (P.W.2) also sustained injury and Sabbal Singh, Chandra Singh and Kaura Devi died on the spot. There is nothing in her cross-examination to show that she is either telling lie or was not present at the time of the accident. However, there are clear allegations made in the petition to show that it is a collusion

between the vehicles and the accident occurred due to rash and negligent driving of the drivers of both the vehicles. The evidence of Kailashi Devi (P.W.2) cannot be rejected easily only on the ground that there are minor discrepancies in her deposition. In case, if the deposition of this witness is taken in its totality, the same inspires confidence.

12. I have also examined the evidence of Manmohan Mittal (D.W.1) who is a Junior Engineer of P.W.D. and driver Mahendra Singh (D.W.2) who was driving the truck at the time of the accident but the major contradictions are there in the statement of both these witnesses. Both these witnesses i.e. Manmohan Mittal (D.W.1) and Mahendra Singh (P.W.2) are trying to conceal the truth. The negligence of the truck driver is very well established because according to the pleadings of the opposite parties, the bus fell down in the *Khud* as there was collusion between it and the truck. Though it may not have been a head on collision. Therefore, there is no doubt that the bus driver was driving the bus with a high speed and negligently. But at the same time it cannot be said that the truck was diligent. In case, if the truck driver had really blown the horn the accident might have been averted. Therefore, on the facts and circumstances of the present case, I come to the conclusion that both the vehicles are held guilty for negligence and carelessness due to which the accident took place.

13. Simply for the reason that the truck was ascending and the bus was descending, it cannot be held that the truck driver was not negligent. The bus in question belongs to U.P.S.R.T.C. and the offending truck also belongs to the P.W.D. of the State of U.P. The truck in question was being driven by Mahendra Singh, I am, therefore, of the view that

both the vehicles are liable to pay the amount of compensation.

14. The record reveals that at the time of the accident the deceased was 50 years old. It has also come in the statement of Fajeeti Devi (P.W.1) that her husband was doing the agricultural work and from it he used to make an income of Rs. 400/- per month, out of it he would have expected to have been spending Rs. 100/- on himself and rest of Rs. 300/-, he was expected to spend on his family every month. Therefore, if the monthly financial dependency of the claimant is reckoned as Rs. 300/- then the annual contribution comes to Rs. 3600/- and in case, of multiplier of 15, the total amount comes to Rs. 54,000/-.

15. The Tribunal on the aforesaid amount has further deducted a lump sum amount of 25% in view of the law laid down in case of ***Oriental Fire and Central Insurance Company Ltd. Vs Baldev*** reported in ***A.I.R. 1985, Allahabad 220*** and after this deduction the figure comes to Rs. 40,500/- but the Tribunal has further deducted an amount of Rs. 15,122/- out of the total amount of Rs. 40,500/- as a sum of Rs. 15,122/- was paid to the claimants by the State due to death of the deceased in the accident. Thus deduction was found to be justifiable by the Tribunal on the basis of the observations made by the Hon'ble Apex Court in ***Gobald Motor Services Ltd. Vs Veluswami*** reported in ***A.I.R. 1962 S.C. 1.***

16. After the aforesaid deduction, the total amount of compensation to be paid to the claimant comes to Rs. 25,378/-. The Tribunal has further awarded an amount of

Rs. 2000/- as loss of consortium, Rs. 4000/- as loss of love and affection and Rs. 3000/- as damages for shock.

17. Thus the awarded amount of compensation to be paid to the claimants comes to Rs. 34,378/-. The Tribunal has directed that this amount shall be paid by the U.P.S.R.T.C. as well as State of U.P. in equal shares along with the interest of 6% per annum from the date of filing the petition till the date of payment.

18. This appeal has been preferred by the State of U.P., therefore, I direct that the State U.P. to whom, the truck in question was involved is liable to pay the amount of compensation which falls in its share.

19. With the aforesaid observation, I do not find any merit in this appeal, the impugned judgment and order passed by the M.A.C.T. concerned does not suffer from any illegality or infirmity.

20. Accordingly, the appeal is dismissed.

(B.C. Kandpal, J.)

07.09.2006
ASWAL